

**STATE OF MINNESOTA
DEPARTMENT OF COMMERCE**

Bulletin 2005-5
Issued this 4th day of August 2005

To: All Workers' Compensation Insurers Licensed in Minnesota

This bulletin contains the filing procedures and forms that should be utilized to expedite the review of workers' compensation filings made in Minnesota. The purpose of this bulletin is to assist workers' compensation insurers in meeting the filing requirements set forth in Minnesota Statutes and Minnesota Rules, and to provide insurers with additional information that will assist the department in expediting the review process. It supersedes Bulletins 98-2, 99-3, 2000-1, 2001-2, 2002-6, 2002-7, 2003-3, and 2004-3. Any enforcement action or filing disapprovals will be based on a case-by-case analysis in accordance with applicable Minnesota statutes and administrative rules.

1. Limited Power of Attorney - (LPOA)

Under Minn. Stat. §79.56, Subd. 1, each insurer is required to file with the commissioner "a complete copy of its rates and rating plan, and all changes and amendments thereto." This statutory language became effective January 1, 1996, and significantly changed workers' compensation filing procedures. The previous statutory language allowed insurers to automatically use all of the rating plans and other filings made by the Minnesota Workers' Compensation Insurers Association (MWCIA) on their behalf, and only required that each insurer file its schedule of rates and independent rating plan modifications for approval by the department.

The 1995 legislative revisions deleted the statutory language that permitted these so-called "reference filings", which made it necessary for each insurer to independently file all filings that were made by the MWCIA. Because of the administrative burden of this requirement, the department agreed to an alternative proposed by the industry that permits an insurer to elect to continue to use MWCIA filings by submitting a one-time Limited Power of Attorney (LPOA). A copy of the LPOA is attached for your reference. The LPOA remains in force until the insurer notifies the department that it intends to revoke the authorization.

If your company is recently licensed, has been inactive or you have other questions regarding whether the LPOA has been filed on its behalf, please contact the department.

2. Items for which separate filing fees are required:
 - a. schedule of rates;
 - b. rate deviations;
 - c. dividend plans;
 - d. policy forms;
 - e. endorsements; and
 - f. retrospective rating plans.

[Minnesota Rules Part 2605.0200(F)]

Many insurers choose to combine several items within one filing. However, when preparing a filing bear in mind that the more items that are combined in a filing, the greater the risk that problems may be found that delay approval or result in disapproval of the filing. Also, there are different statutory review timelines for rates and forms, so when both are contained in one filing the more stringent review timeline must be applied. Therefore, if some items are time sensitive, they should be filed separately from other less critical items. For example, while it makes sense to combine a schedule of rates filing with a rate deviation filing, adding forms to the filing may delay approval or result in disapproval of the filing.

3. Electronic Filings

The department now accepts workers' compensation rate filings via the Rate Filing Application (RFA) tool found on the Minnesota Workers' Compensation Insurance Association (MWCIA) web site, and all types of workers' compensation filings on SERFF. Updated information on department requirements for submitting filings on the RFA tool and SERFF will be available in August to coincide with the release of the 2006 Minnesota Ratemaking Report.

Instructions for how to submit RFA filings are available on the MWCIA web site at www.mwcia.org under the tabs Member Services/Rate Filing Application. An expanded version of the RFA is available this year. This year's enhancements will include a streamlined procedure for submitting group filings, the ability to attach additional rate manual pages to the filing, and the ability to submit filings that require analyst or actuarial review with a shortened turn-around time. Specific instructions for using the RFA will be available in mid-August to coincide with the release of the 2006 Minnesota Ratemaking Report.

When making a SERFF filing, please review Minnesota Workers' Compensation Instance General Instructions, Requirements, and Submission Requirements before preparing your filing to make sure you are using the most current version. These items can all be found in the SERFF Workspace. Insurers may use the RFA tool to develop their rate pages and attach them to a SERFF filing. Instructions as to how to utilize this option can be found on the MWCIA web site.

4 Transmittal Forms and Filing Fees

The department prefers that insurers use the National Association of Insurance Commissioners (NAIC) Property and Casualty Transmittal Document when submitting workers' compensation filings. This form can be found on the NAIC web site at www.naic.org/rates_forms/docs/PCtransDoc_intelligent.pdf

Minnesota Statute 60A.14 was amended effective July 1, 2005 to change the schedule of filing fees. The fee for paper filings increased to \$90, while the filing fee for electronic filings remains at \$75.

Insurers submitting filings electronically are eligible to utilize the MWCIA Filing Fee Advancement Program. This program allows companies submitting their filings either on the RFA or SERFF to elect to have the MWCIA advance their filing fees to the Commerce Department. This will allow the department to immediately process the filing and the insurer will be billed by the MWCIA on a quarterly basis. Specific information on how to designate this option for each type of electronic filing is contained in the RFA tool and the SERFF General Instructions. Paper filings are not eligible for this option.

5. Filing Timeline

Minnesota Statutes §79.56, Subd. 1 requires each insurer to file with the department a complete copy of its rates and rating plan, as well as all supporting documentation requested by the department, at least 60 days prior to its effective date.

Due to the fact that Minnesota is a prior approval state for workers' compensation rates and rating plans, if you need to revise the effective date of your filing after it has been approved you must notify the department prior to the effective date of the original filing. We recommend you contact us by fax, e-mail or telephone to ensure the fastest action on your file. Department staff can advise you how to revise your filing so that statutory violations can be avoided.

In addition, when preparing your filing you should also bear in mind that Minn. Stat. §60A.351 requires insurers renewing a workers' compensation policy at less favorable terms to provide the insured with notice of the changes at least 60 days prior to the expiration of the policy. Effective August 1, 2005 coverage under the federal Terrorism Risk Insurance Act (TRIA) is excluded from this notice requirement. For further information regarding this statute, please refer to our department Bulletins 2002-2 and 2005-3.

6. Special Compensation Fund Assessment

The procedure for collecting the Special Compensation Fund assessment was altered during the 2002 Legislative Session. As a result of the revisions made to Minn. Stat.

§176.129, Subd. 2a.(c) a factor for the Special Compensation Fund assessment may no longer be included in the Development of the Pure Premium Multiplier exhibit.

Additional information on the Special Compensation Fund assessment can be found in Appendix 8 of the 2006 Minnesota Ratemaking Report.

7. Basic Schedule of Rates filings should contain the following items:

- a. The Workers' Compensation Rate Filing Form [DOC-WC-1 (ed. 7/04)] should be completed. A copy of this form is attached for your reference.

Please note: The Minnesota Department of Commerce recommends that insurers base their 2006 rate filings on the January 1, 2006 Minnesota Ratemaking Report.

- b. A company filing a rate change should provide data and analysis to establish that the proposed rates are adequate and not excessive. [Minn. Stat. §79.55]
- c. We recommend that five years of loss and expense experience be submitted. If the company has not been writing workers' compensation coverage in Minnesota for five years, as much Minnesota experience as is available should be submitted. If five years of countrywide experience is available, that should also be submitted [Minn. R. Part 2705.2500, Subp. 1].
- d. An exhibit describing how the company's pure premium base rate multiplier was developed must be included. [Minn. R. Part 2705.1800(E)] The department does not require the format of the company's exhibit to be identical to the sample format, but the company's exhibit should not neglect any of the items included in the sample. For example, if the company chooses not to use trend or development factors, it should not simply leave out any mention of such factors; it should explain and support its choice. Please be aware that the Minnesota Adoption of Rate Service Organization Prospective Loss Costs Reference Filing Adoption Form, which is used for other property/casualty lines, is not suitable for use with workers' compensation rate filings.

Also, the pure premium base rate multiplier calculation should not include a .25 percent assessment for the Assigned Risk Plan Review Board, as this assessment only applies to Assigned Risk Plan policies.

- e. If the company is deviating any classification codes the Class Code Deviation Filing Form [DOC-WC-2 (7/98)] and the Average Effective Multiplier Calculation [DOC-WC-7 Rev. 7/02] must be submitted. A copy of these forms is attached. There is no limit on the number of classification codes that may be deviated. Each deviation must be supported, and this supporting documentation must be submitted as a part of your filing [Minn. R. Part 2705.1800(E)].

- f. Final manual rate pages must be submitted [Minn. Stat. §79.56, Subd. 1]. When calculating your rates for classification codes for which Minnesota Contractors Premium Adjustment Program (MCPAP) pure premium base rates appear, those are the base rates that must be used. Use of the DSR pure premium base rates will result in artificially low rates.
 - g. Do not submit the State of Minnesota Filing Certification form with workers' compensation filings. Bulletin 2000-4, which contains this form, specifically states that it does not apply to workers' compensation insurance.
 - h. Do not submit a Rate Change Impact Table with the filing. This requirement was abolished in 1999. Refer to department bulletin 99-3.
 - i. We also request that the company submit an extra copy of any materials it wants returned for acknowledgment of the department's approval. A stamped self-addressed envelope bearing sufficient postage for the materials the company wants returned must also be submitted. If no envelope is enclosed, or the amount of postage is inadequate, a stamped copy of the most recent cover letter is the only documentation that will be returned.
 - j. Do not send copies of rate filings to the MWCIA until approval has been received from this department. This ensures that the MWCIA has a correct copy of your most recent rates on file. Copies of filings submitted via RFA or SERFF do not need to be submitted to the MWCIA, as they will have access to these filings electronically.
8. **Schedule Rating Plans**
Minnesota Rule Part 2705.3000 precludes any schedule-rating plan from utilizing a maximum debit in excess of 25 percent.
9. **Additional Credits**
Historically the department has approved the types of additional credits discussed below. To expedite the review process, the referenced maximum credits can be approved without actuarial support. Filings requesting higher maximum credits will be considered on the basis of the loss experience and other actuarial support provided.
- a. **Drug-Free Workplace**
Insurers who file drug-free workplace programs that meet the requirements of Minn. Stat. §181.950 - 181.957 may offer a 5 percent credit. An insurer may file a larger credit if it can provide adequate actuarial support.

The department recommends, but does not require, that insurers attach an amendatory endorsement to the policy that contains a statement similar to the following:

"Employers insured under this coverage should be aware of the Drug and Alcohol Testing In The Workplace provisions contained in Minn. Stat. §181.950 – 181.957. An insured employer that violates this law may have exposure for damages, attorney fees, and injunctive relief that will not be covered by this policy."

b. Managed Care

The department will approve a 5 percent credit for insurers who have contracted with a managed care organization that is certified under Minn. Stat. §176.1351. An insurer may file a larger credit if it can provide adequate actuarial support. If the insurer is offering a managed care program, but has not contracted with a certified managed care organization, a credit may be offered if the company can provide actuarial support for the amount of the credit being requested. The maximum that has been approved to date has been 3 percent.

The department recommends, but does not require, that insurers attach an amendatory endorsement clarifying the type of managed care coverage that is being offered. Two sample endorsements are included in the bulletin, one for use when a certified managed care organization has been contracted with and the other for use when an uncertified managed care organization is being utilized. Insurers who choose to utilize either of these endorsements must independently file them with the Department.

c. Collective Bargaining Dispute Resolution

The department will allow a credit of 3 percent to be offered to an employer that is a party to a collective bargaining agreement that has been approved by the Minnesota Department of Labor and Industry in accordance with Minn. Stat. §176.1812. An insurer may file a larger credit if it can provide adequate actuarial support.

Insurers who choose to offer such a credit must file a Minnesota Dispute Resolution Endorsement similar to the one included in this bulletin. The Department of Labor and Industry recommends the attached endorsement.

d. Safety Programs

Minnesota Statute §79.085 requires that all insurers writing workers' compensation insurance in Minnesota shall provide safety and occupational health loss control consultation services to each of their policyholders requesting the services in writing. Insurers may offer a credit of up to 3 percent to policyholders who request these services. An insurer may file a larger credit if it can provide adequate actuarial support.

e. Return-To-Work Programs

The department has approved credits of up to 2 percent for insurers that want to provide an incentive for insureds to comply with the statutory return-to-work

requirements. An insurer may file a larger credit if it can provide adequate actuarial support.

10. **Deductibles**

- a. Minnesota Statute §79.081, Subd. 1 requires each insurer writing workers' compensation in Minnesota to make a deductible available to a policyholder upon request. An insurer is not required to offer a deductible to an employer if, as a result of a credit investigation, the insurer determines that the employer is not sufficiently financially stable to be responsible for the payment of deductible amounts. This exception is found in Minn. Stat. §79.081, Subd. 3.
- b. Minnesota Statute §79.081, Subd. 2 requires that if an insured employer chooses a deductible, the insurer shall administer the claim as provided in the terms and conditions of the insurance policy and seek reimbursement from the insured employer for the deductible.
- c. Newly licensed Minnesota workers' compensation insurers should be aware of the following requirement contained in Minn. Stat. 79.081, Subd. 2. Each insurer shall notify its agents authorized to write workers' compensation insurance about the availability and terms and conditions of deductibles required by this section, using a brochure in a format approved by the commissioner.

11. **Large Deductible Plans**

- a. Any company offering a large deductible plan must include a statement in its rating manual certifying that no deductible limit will be offered or written that exceeds the company's retention limit with the Workers' Compensation Reinsurance Association (WCRA). Minnesota Statute §79.34 states as follows:

"The reinsurance association shall provide and each member shall accept indemnification for 100 percent of the amount of ultimate loss sustained in each loss occurrence relating to one or more claims arising out of a single compensable event, including aggregate losses related to a single event or occurrence which constitutes a single loss occurrence, under chapter 176 on and after October 1, 1979, in excess of a low, a high, or a super retention limit, at the option of the member."

- b. Coverage applies on a per occurrence basis, except in the case of occupational disease where coverage applies on a per person per occurrence basis. This requirement is contained in Minn. Stat. §79.34, Subd. 2. If your company is using a per person limit for bodily injury other than that caused by occupational disease, claims will need to be carefully tracked to ensure that all persons injured as part of the same occurrence are linked so that your company's retention limit with the WCRA is not invaded.

- c. Minnesota Statute §79.081, Subd. 2 requires that if an insured employer chooses a deductible, the insurer shall administer the claim as provided in the terms and conditions of the insurance policy and seek reimbursement from the insured employer for the deductible. If you currently are using a large deductible form that contains language indicating that the employer will or may pay claims directly and seek reimbursement from the insurer, you must revise your form to comply with the statutory language at the earliest opportunity.
- d. Please note that if you are using mutually agreed upon terms to rate your large deductible program, the insured must meet the statutory threshold of \$250,000 in countrywide workers' compensation premium set out in Minn. Stat. 79.56, Subd. 1(b) and the Large Risk Rating Filing certification form [DOC-WC-10, Rev. 7/05] must be filed with the department on a per employer basis upon each renewal of the employer's policy. The filing fee for this type of large risk filing is \$75 per employer if the certification is submitted electronically, or \$90 per employer if the certification is submitted on paper. Refer back to section 3 of this bulletin for information regarding how to submit these filings via the Rate Filing Application (RFA) available on the MWCIA web site.

12. Dividend Plans

If more than one dividend plan is being filed, the various plans must be accompanied by objective and logical assignment criteria. It must be demonstrated that the process does not permit the possibility of different final premiums for identical policyholders [Minn. Stat. §79.074, Subd. 2].

13. Form Filings

Insurers must use the forms filed on their behalf by the MWCIA, unless it is a rating related endorsement for which the MWCIA has not made a suitable filing. The applicable administrative rule is Minn. R. Part 2705.3200. This rule states as follows:

"Workers' compensation insurance must be written using policy forms filed by the data service organization of which the insurer is a member except that if the insurer files a rating plan requiring a policy provision or endorsement for which the data service organization has made no usable filing, then the insurer may file its own policy forms needed to implement its rating plans."

Some examples of the types of independent forms that may be filed are dividend plan endorsements, large deductible program endorsements, managed care endorsements, drug-free workplace endorsements, and collective bargaining dispute resolution endorsements.

14. Minnesota Statute §79.56, Subd. 1(b)

This statute provides an exception to the normal filing requirements for an employer who generates \$250,000 in annual countrywide written workers' compensation

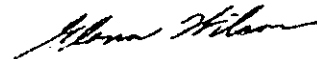
premium under the rates and rating plan of an insurer before the application of any large deductible rating plans. Such an employer may be written by an insurer using rates or rating plans that are not subject to disapproval, but which have been filed with the department. The Large Risk Rating certification form [DOC-WC-10, Rev. 7/05] must be filed for each employer being rated under this statutory provision upon each renewal of the employer's policy. This filing form applies to all types of rating plans that fall under this statute, including but not limited to large deductible programs, large risk alternative rating options (LRARO), and deviated loss cost multipliers and other rating factors. The filing fee for all filings made under this provision is \$75 per employer for certifications submitted electronically or \$90 per employer for certifications submitted on paper.

Refer back to section 3 of this bulletin for information regarding how to submit these filings via the Rate Filing Application (RFA) available on the MWCIA web site.

15. **Excess Workers' Compensation Insurance**

Any company offering an excess workers' compensation insurance policy must include a statement in its rating manual certifying that no excess retention will be offered or written that exceeds the low retention limit set by the Workers' Compensation Reinsurance Association (WCRA). This requirement is found in Minn. Stat. §79.34, Subd. 2.

Questions regarding this bulletin should be referred to Tammy L. Lohmann, Chief Workers' Compensation Analyst at (651) 296-2327 or tammy.lohmann@state.nm.us.



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